



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154844

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 11, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$677 for the period of June 1, 2013 – January 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner has a household size of one.
2. In August, 2012, the Petitioner had a FS renewal. On August 23, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would continue to receive \$200/month

in FS benefits based on gross monthly income of \$46.48 from [REDACTED]. It further informed him that if his monthly gross income exceeds \$1,180, he must report his income to the agency on or before the 10th day of the next month.

3. On February 7, 2013, the Petitioner submitted a Six Month Report Form (SMRF). He reported his employment with [REDACTED] had ended. He further reported employment with [REDACTED]. He reported working an average of 20 hours/week at \$11/hour. Petitioner provided pay statements for December 31, 2012 showing 28.25 hours at \$11/hour plus "switch pay" of \$61.50 for total gross income of \$372.25. He submitted two additional pay statements for January, 2013. One statement indicates regular hours of 20.75 at \$11/hour and "switch pay" of \$41.25 for total gross income of \$269.50. The second statement indicates regular hours of 22 at \$11/hour plus "switch pay" of \$78 and tips of \$20 for total gross income of \$340.
4. On September 3, 2013, the Petitioner provided an employment verification form. It did not include tips or overtime. It indicates the Petitioner works 30 – 40 hours/week at \$11/hour. It indicates a start date of August, 2012. The Petitioner did not submit any pay statements.
5. On September 5, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$16/month in FS benefits based on gross earned income of \$1,655.50/month.
6. On October 7, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$15/month in FS benefits based on gross earned income of \$1,655.50.
7. In November, 2013, the agency received an alert of a wage discrepancy.
8. On November 7, 2013, the Petitioner submitted two pay statements for income in October, 2013. The statement for the pay period of September 15, 2013 – September 28, 2013 shows regular hours of 48 at \$11/hour plus "switch pay" of \$144 plus tips of \$65. The statement for the period of September 29, 2013 – October 12, 2013 shows regular hours of 55.5 at \$11/hour plus "switch pay" of \$135.75 and tips of \$32.
9. On January 10, 2014, the agency issued a Notification of FS Overissuance to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$677 for the period of June 1, 2013 – January 31, 2014.
10. On January 17, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in November, 2013. The agency alleges client error in failing to report a change in household income, resulting in the overissuance. I conclude that there was an overissuance as a result of client error.

The Petitioner's income was updated in February, 2013 when he submitted a SMRF and pay statements. The agency calculated gross monthly income of \$633. The Petitioner conceded at the hearing that his pay is much lower in the winter months and increases in warmer weather. The state wage match indicates that the Petitioner's wages increased significantly in the 2nd quarter of 2013 to an average of \$1540.08/month. The Notice of Decision issued to the Petitioner in August, 2012 informed him of the requirement to report to the agency if his gross monthly income increased to more than \$1,180. This information was to be reported by the 10th day of the next month. Therefore, the Petitioner was required to report to the agency by May 10, 2013 that his income had increased. The agency would have updated his case to impact his FS benefits beginning June 1, 2013. The Petitioner submitted no current pay statements between February, 2013 – November, 2013 to allow the agency to properly update his case. The state wage record demonstrates that the Petitioner received an average of \$1540.08/month for April – June, 2013, \$2,626.28/month for July – September, 2013 and \$1,499.66/month for October – December, 2013.

I reviewed the agency's overissuance worksheets. The agency did not establish why it seeks to recover an overpayment for November and December, 2013 and January, 2014. The Petitioner submitted current pay statements to the agency in November, 2013 and the case was updated. This should have ended the overissuance. The overissuance should, therefore, be revised to reflect an overpayment period of June 1, 2013 – October 31, 2013 and an overissuance totaling \$632.

CONCLUSIONS OF LAW

The agency may recover an overissuance of FS benefits in the amount of \$632 for the period of June 1, 2013 – October 31, 2013. The agency may not recover an overissuance of \$15/month for the period of November 1, 2013 – January 31, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period to June 1, 2013 – October 31, 2013 and revise the amount of the overissuance that it may recover against the Petitioner to \$632. The agency must further take all administrative steps necessary to rescind the overpayment for November 1, 2013 – January 31, 2014 in the amount of \$45 and cease any collection activity for that amount. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

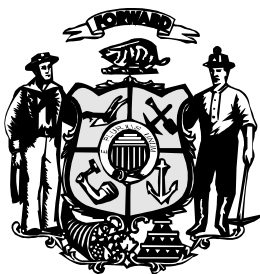
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 9, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability